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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL
 CATALDO, JULIAN
 SANTIAGO, and SUSAN LYNN
 HARVEY, individually and on behalf of all
 others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688

**DECLARATION OF MARK MAO IN
 SUPPORT OF PLAINTIFFS' MOTION
 FOR RELIEF FROM CASE
 MANAGEMENT SCHEDULE**

Judge: Hon. Richard Seeborg
 Courtroom 3 – 17th Floor
 Date: December 1, 2022
 Time: 1:30 p.m.

DECLARATION OF MARK MAO

I, Mark Mao, declare as follows:

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration in support of Plaintiffs' Rule 16(b) Motion for Relief from Case Management Schedule.

3. Plaintiffs have, and continue to, diligently seek discovery from Google. Plaintiffs' counsel began serving discovery requests in this matter less than three months after filing Plaintiffs' initial complaint and just days after Google filed its first motion to dismiss. Plaintiffs have served ten sets of document requests on Google, with their first set served on October 15, 2020. Plaintiffs have served seven sets of interrogatories on Google, with the first set served on November 4, 2020. Plaintiffs have served four sets of requests for admission. In total, Plaintiffs have now served 25 interrogatories, 52 requests for admission, and 285 requests for production.

4. Notwithstanding these efforts, Google has repeatedly attempted to delay and obstruct discovery. As of October 26, 2022, Google has only produced [REDACTED] documents. Google has withheld schemas and logs for the data at issue (having only produced data from four logs in total), including those revealing how Google saves and uses "WAA-off" data. Google's delay comes despite Plaintiffs' repeated request for information to which it is entitled. *See e.g.*, Ex. 4, Correspondence from Google Counsel (Showing counsel for Google delayed responding to request for WAA data for nearly three months).

5. Plaintiffs have sent Google numerous joint letter briefs in August, September, and October 2022 identifying impasses. Google has been slow to provide its portion of these briefs. Google took more than two weeks to complete its portion of the brief where Plaintiffs sought damages-focused documents (Dkt. 247). Google also took over one month to provide its portion of the letter brief the parties filed regarding logs and dashboards (Dkt. 250). Plaintiffs have repeatedly raised concerns about the lack of progress with discovery to Google.

1 6. For the nineteen Court-ordered custodians, Google's counsel did not begin
2 producing unique custodial documents until July 2022, after the Court granted a stipulated
3 discovery extension on May 20, 2022 (Dkt. 244). Google later acknowledged additional time was
4 needed to review documents and conduct depositions, and stipulated to another extension on
5 August 11, 2022 (Dkt. 246).

6 7. With May 27, 2022 discovery requests, Plaintiffs requested Google produce all
7 dashboards and tools that track web and app activity. Since then, Google has only produced
8 screenshots of drop-down menus for just one dashboard. The parties have met and conferred six
9 times between July and September of this year and recently filed letter briefs on this issue (Dkts.
10 250, 253).

11 8. On September 9, 2022, Plaintiffs asked Google to produce relevant documents
12 relating to the number of Google accounts, revenues Google has generated, and the devices and
13 accounts from which Google receives WAA-off data. Google failed to produce documents
14 responding to this request, instead merely offering to meet and confer. Ex. 1, Google's Response
15 to RFPs, Set Nine. [REDACTED]

16 [REDACTED]
17 [REDACTED]. Ex. 2, Fair Tr.
18 243:5-245:16. Plaintiffs have requested that Google add these individuals as custodians and search
19 for these financial impact studies. Google refused, prompting Plaintiff to request that Google apply
20 just one search term to their files, focusing on documents related [REDACTED]. Yet
21 Google will not even provide Plaintiffs with the hit counts for that single search term saying "we
22 don't think that's appropriate at this late hour." Ex. 5, Correspondence from Google Counsel on
23 Oct. 23, 2022. Plaintiffs will raise this dispute with the Court.

24 9. In September, Plaintiffs requested deposition dates for eight current and former
25 employees, and while two of those employees have been scheduled to take place after the discovery
26 deadline, six have not been scheduled at all, including one former employee who returned to India
27 until at least November. One of the two depositions scheduled is Google's 30(b)(6) deponent on
28

1 Plaintiff's revenue topics. Google has agreed to produce limited custodial documents in advance
2 of that deposition, and Google has proposed that it take place in mid-late November. However,
3 delay in production of responsive custodial documents will likely necessitate delay in deposing
4 that witness.

5 10. Plaintiffs have requested additional depositions beyond the presumptive 10-witness
6 limit under the Federal Rules of Civil Procedure. Google disputes this request, notwithstanding
7 the fact that the Court in *Brown v. Google*—a similarly large and complex case—permitted 24
8 depositions.

9 11. On September 30, 2022, Plaintiffs served their Tenth Set of Requests for
10 Production, Plaintiffs' Seventh Set of Interrogatories, and Plaintiffs' Fourth Set of Requests for
11 Admission. These sets included a small number of requests relating to Google Search and Google
12 services other than Firebase. Plaintiffs have now served a total of 25 interrogatories and 52 requests
13 for admission.

14 12. On October 7, 2022, Plaintiffs sent Google a letter identifying numerous
15 deficiencies with respect to Google's privilege log, which Google completed on September 6,
16 2022. These deficiencies include [REDACTED] purportedly privileged communications Google continues to
17 withhold where no attorney was included. Google has yet to respond to this letter.

18 13. On October 13, 2022, Plaintiffs met and conferred with Google to discuss the need
19 for an extended case schedule beyond October 31, 2022. On October 24, 2022, Google's counsel,
20 despite acknowledging that multiple discovery issues remain open, maintains it "intends to enforce
21 the fact discovery deadline" and that these outstanding items can be worked through as "follow
22 up" after discovery without moving any deadlines. Ex. 6, Correspondence from Google Counsel
23 on Oct. 24, 2022.

24 14. While an extension is necessary to effect Plaintiff's outstanding discovery requests,
25 Plaintiffs will require no additional requests to complete discovery with respect to the operative
26 complaint.

1 15. Attached hereto as **Exhibit 1** is a true and correct copy of Google's Responses and
2 Objections to Plaintiffs' Ninth Set of Requests for Production.

3 16. Attached hereto as **Exhibit 2** are true and correct excerpts from the transcript of the
4 October 3, 2022 deposition of former Google employee Greg Fair.

5 17. Attached hereto as **Exhibit 3** are true and correct excerpts from the rough transcript
6 of the October 25, 2022 deposition of Google employee Eric Miraglia.

7 18. Attached hereto as **Exhibit 4** is a true and correct copy of correspondence from
8 Google's counsel dated [REDACTED]
9 [REDACTED].

10 19. Attached hereto as **Exhibit 5** is a true and correct copy of correspondence from
11 Google's counsel dated October 23, 2022.

12 20. Attached hereto as **Exhibit 6** is a true and correct copy of correspondence from
13 Google's counsel dated October 24, 2022.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed this 27th day of October, 2022, at San Francisco, California.

16 Dated: October 27, 2022.

Respectfully submitted,

17 By: /s/ Mark C. Mao

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